

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4347 of 1997

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
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SATISH C GUPTA

Versus

BHARAT HEAVY ELECTRICALS LIMITED

Appearance:

MR BN PATEL for Petitioner
MR KM PATEL for Respondent No. 1, 3, 4

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 11/12/97

ORAL JUDGEMENT

Petitioner before this Court is serving as a Senior Manager under the respondents herein (hereinafter referred to as "the Corporation"). The petitioner claims that he was due for further promotion as the Deputy General Manager in the year 1992. However, his case for promotion was not considered in the year 1992. His case

for promotion was considered in the year 1994 but the decision of the Departmental Promotion Committee (hereinafter referred to as "the Committee") has been kept in a sealed cover. The petitioner claims that there is no reason why the decision of the Committee should have been kept in a sealed cover and should not have been given effect to.

2. Mr. B.N.Patel, the learned advocate has appeared for the petitioner. He has submitted that in the year 1991 when the petitioner was posted at Haridwar, Central Bureau of Investigation (hereinafter referred to as "the CBI") raided the premises of the petitioner under the belief that the petitioner had amassed wealth disproportionate to known sources of his income. However, nothing objectionable was found by the CBI Personnel during the raid except the foreign exchange i.e. \$502. Said \$502 were given to the petitioner by his sister who had visited from the United States of America just a few days before. The petitioner, however, should have converted the said foreign exchange into Indian Currency through a licenced dealer in foreign exchange which he failed to do. For the aforesaid irregularity committed by the petitioner, he was tried under the Foreign Exchange Regulation Act (hereinafter referred to as "the FERA") and a fine of Rs.1250/- was imposed upon the petitioner. Mr. Patel has submitted that the said incident cannot be said to be a misconduct committed by the petitioner. At the most, it was an irregularity committed by the petitioner for which a nominal fine was imposed upon him by the competent authority. Said incident could not have come in the way of the petitioner's promotion to the higher post. He has further submitted that since the CBI Personnel could not find any objectionable material on the premises of the petitioner, they had planted a revolver and have lodged a complaint against the petitioner for maintaining an unlicensed revolver for which a criminal complaint being Criminal Case No. 2256/92 is pending before the learned Chief Judicial Magistrate, Haridwar. Mr. Patel has vehemently submitted that the petitioner never maintained any weapon much less a revolver. He has submitted that the said revolver was planted with a view to harrassing the petitioner. He has submitted that in any view of the matter, the only charge levelled against the petitioner is that of maintaining a unlicensed revolver. There is no charge that the petitioner had used it or he carried it or that he threatened any other person with it. Thus, the petitioner cannot be said to have committed any misconduct. If at all it is presumed that the charge is true, even then, the petitioner cannot be said to have

committed any misconduct or any illegality in the course of his employment for which his promotion prospect should be adversely affected. No act of commission or omission on the part of the petitioner has affected his efficiency or devotion to duty or his official reputation. Thus, the same could not have been made to come in the way of the petitioner's promotion. In support of his contention, Mr. Patel has relied upon the judgment of the Hon'ble Supreme Court in the matter of M/S GLAXO LABORATORIES (I) LTD. V. PRESIDING OFFICER, LABOUR COURT MEERUT AND OTHERS (AIR 1984 SC 505). He has particularly relied upon paragraph 13 of the judgment wherein the Court has held that;

"The employer has hardly any extraterritorial jurisdiction. He is not the custodian of general law and other situations nor the Guru or mentor of his workmen for their well regulated cultural advancement. If the power to regulate the behaviour of the workmen out side the duty hours and at any place whereever they may be was conferred upon the employer, contract of service may be reduced to contract of slavery. The employer is entitled to prescribe conditions of service more or less specifying the acts of misconduct to be enforced within the premises where the workmen gather together for rendering service."

Relying upon the above referred observations made by the Supreme Court, Mr. Patel has argued that the petitioner's maintaining an unlicensed revolver at his residence which was outside the premises of the Corporation and which had no connection whatsoever with the performance of the duty by the petitioner, cannot be made a cause for withholding the promotion otherwise due to the petitioner.

Learned advocate Mr. K.M. Patel has appeared for the respondent Corporation and has relied upon rule 4 and 5(20) of the BHEL Conduct Discipline and Appeal Rules , 1975(hereinafter referred to as "said Rules") which are applicable to the petitioner. Under Rule 4 of the said Rules, every employee of the Corporation is enjoined at all times, inter alia, to do nothing which is unbecoming of a public servant. Rule 5 enumerates various acts of commission and omission which would amount to misconduct. Sub-rule (20) thereof reads thus;

"(20) Commission of any act subversive of discipline or of good behaviour."

Note below said Rule reads thus;

"The above instances of misconduct are illustrative in nature and not exhaustive."

He has further relied upon the promotion policy of the Corporation (Annexure "I" to the petition). Paragraph-2 thereof provides for the procedure for considering the cases of the employees against whom disciplinary case/criminal prosecution is pending. Paragraph-1 thereof provides for the categories of employees to whom sealed cover procedure should apply. Sub-paragraph (iii) provides

" employees in respect of whom prosecution for criminal charge is pending".

Paragraph-8 of the said promotion policy provides for six monthly review for grant of ad-hoc promotion keeping in view aspects referred to therein. Said paragraph provides inter-alia, that;

"The competent authority should also consult the CBI and take their views into account where the criminal prosecution arise out of the investigations conducted by the CBI."

Mr. Patel has submitted that in view of the prosecution pending against the petitioner, though his case for promotion has been considered by the Committee, sealed cover procedure has been followed in accordance with the promotion policy. Since the prosecution has been pending since the year 1991, petitioner's case for ad-hoc promotion was also considered by the Corporation. Since the prosecution has been lodged by the CBI, under its communication dated 10th January, 1997, the Corporation had sought advice of the CBI. Under its communication dated 3rd February, 1997, the CBI has opined that the charge levelled against the petitioner is grave enough to warrant continued denial of promotion. Mr. B.N.Patel has submitted that the communication sent by the CBI suffers from the vice of non-application of mind inasmuch as it has referred to three instances i.e. one of the penalty imposed under the FERA Proceedings, the prosecution lodged by the CBI and the Departmental Inquiry initiated by the Corporation. However, by the time, the CBI had given advise, FERA proceedings were over and just a nominal fine was imposed upon the petitioner and the departmental inquiry initiated against the petitioner by the Corporation was dropped long ago.

It is true that the disciplinary action initiated against the petitioner was dropped by the Corporation with a warning to the petitioner to be careful in future. Whether such warning should come in the way of promotion or not is for the employer to decide and this Court cannot express any opinion whether the issuance of warning was enough to withhold the promotion otherwise due to the petitioner. Though the petitioner was imposed nominal penalty of Rs. 1250/-, the petitioner was found to have committed irregularity in keeping the foreign currency with him. The effect of the same has also to be considered by the Corporation while considering his case for further promotion and the fact remains that the criminal prosecution is pending against the petitioner. Since the decision of the Committee is kept in a sealed cover, I am not called upon to answer whether the factum of the petitioner's having been imposed penalty for violation of the FERA Provisions or the warning issued to him in the departmental proceedings should warrant denial of promotion to the petitioner or not. The only question that arises for my consideration is whether the Corporation is justified in following the sealed cover procedure in case of the petitioner.

In the matter of Glaxo Laboratories (I) Ltd. (*supra*), the Court was considering the Standing Orders issued under the Industrial Disputes Act, 1948 in respect of the workmen. The workmen could not have been said to be the public servants. In my view, therefore, on the facts of the present case, the principles laid down in the said judgment shall have no applicability. However, in the matter of S. Govinda Menon v. Union of India and another, (AIR 1967 SC 1274), the Court was considering precisely the same issue i.e. whether the commission of acts not related to the service of the public servants, employer could have initiated the disciplinary action against the delinquent. In paragraph-6 of the judgment, the Court observed thus;

" It is, therefore, open to the Government to take a disciplinary proceedings against the appellant in respect of his acts or omission which cast reflection upon his reputation for the integrity or good faith or devotion to duty as a member of the service.....In our opinion, it is not necessary that a member of service should have committed the alleged act or omission in the course of discharge of his duties as a servant of the Government in order that it may form the subject of disciplinary proceedings."

Thus, the employer's authority to initiate the disciplinary action against its employee is not confined to his acts of commissions and omissions committed in course of duty alone. It is, in my view, perfectly lawful for the Corporation to follow the sealed cover procedure pending prosecution against the petitioner. Besides, the action of the Corporation in following the sealed cover procedure in case of the petitioner is in accordance with the relevant promotion policy and Conduct Discipline and Appeal Rules, 1975. Neither the said rules nor the policy is under challenge before me. In that view of the matter, the Corporation is perfectly justified in keeping the decision of the Committee in respect of the petitioner in a sealed cover and the same does not call for any interference by this Court. The petitioner may, however, make a representation to the Corporation to take necessary action immediately after the prosecution is over and the trial Court pronounces its judgment.

In view of the above discussion, petition is dismissed. Rule is discharged. There shall be no order as to costs.

Vyas